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BOOK REVIEWS.

A GENERAL SURVEY OF EVENTS, SOURCES, PERSONS, AND MOVEMENTS IN CONTINENTAL LEGAL HISTORY (Vol. I, Continental Legal History Series). By VARIOUS EUROPEAN AUTHORS. Boston: LITTLE, BROWN & Co. 1912. pp. liii, 754.

The Association of American Law Schools has set itself a task of great importance, which is likely to be of the highest value for the science of law in this country, in undertaking the publication of a general history of continental law from the end of the Roman Empire to the present time. It has entrusted the direction of the work to a competent committee of which Professor J. H. Wigmore of Northwestern University is chairman, and which is composed besides of Professors Freund of Chicago, Huberich of Leland Stanford, Lorenzen of Wisconsin, and Mikel of Pennsylvania. The work is to be completed in eleven volumes, and is to treat at greatest length of the legal history of France, Germany, and Italy, while not neglecting that of Spain, Switzerland, the Netherlands, and the Scandanavian states. Separate volumes will be allotted to criminal procedure, civil procedure, and commercial law, one to the general evolution, and one to the work of the great jurists from Papinian to Von Ihering.

The first volume has recently appeared and gives every promise that the task, which is no light one, will be well performed. The committee is wisely not planning an original work, but proposes to translate the best which it can find in books and articles on the legal history of the Latin and Germanic nations of western Europe. The selection has been carefully made. Brissaud for France, Calisse for Italy, and Altamira for Spain, Brunner and Schroeder for Germany, are names which will everywhere command respect. Stintzing, who will be the chief dependence for some parts of German history, is older but not antiquated in the new editions of the later *Abtheilungen*, and the intention seems to be to use Brunner and Schroeder for the earlier period. Considerable portions of this first volume have been literally translated, others have been paraphrased, condensed, or excerpted, always I believe with due warning to the reader. Any process but that of translation in full is no doubt attended with some danger. In ordinary cases it implies that the translator has nearly as complete command of the subject as the author he is translating and is able to decide what may safely be omitted without essentially modifying the meaning intended. At best it involves a change of emphasis and proportion, and some loss of the finer distinctions and qualifications. In the present case, the editorial committee has no doubt a very exact knowledge of the special needs which they are expected to serve, and so long as the process of condensation is carefully controlled by this purpose, it may probably be trusted to give as satisfactory a result as is possible. It is likely also that to the historian the dangers of paraphrase may seem greater than to one whose chief interest is not so directly in knowing exactly what the past fact was.

The present volume is a general survey, on some sides of the subject considerably more full than an ordinary outline, of the whole field of legal history in each of the nations considered down to the present time, designed as an introduction to the following volumes of the series. It

does not deal with technical law, with the history of individual doctrines, or of procedure, but rather with those movements general and local, which have constituted the history of the past, with the various elements which have combined in modern law, and with the influences which have effected the combination; in a word with the whole legal inheritance which the continental world has received from the past, followed through the process of its construction, and with the development of legal science and education. Especially good and detailed, for example, is the treatment of the great Italian law schools of the later medieval centuries, of their revival of Roman law studies and their influence on the development of legal science. The presentation of the sources from which our knowledge of past law is derived is especially full, as would be expected from the purpose of the volume. In the portion devoted to France, this account suffers considerably from the process of condensation, certainly from the point of view of the historian, and is hardly more than a catalogue of the most external facts.

The ordinary practising lawyer will find much to interest him in the book, and to give his own knowledge of the law wider horizons and that deeper significance which comes from perceiving the manifold connections of his narrower national law with the great body of law which rules the civilized world. The volume will have its deepest interest for the lawyer who is already alive to more in the law than the needs of his daily practice, who finds his mind constantly turning to the broader developments in the law of his own time, to the great problems of administering and perfecting both substantive law and procedure. He will find in the history of the past much to instruct and much to encourage him in any present effort.

If one may turn to qualifications, the reader who is greatly interested in the history of Anglo-Saxon law will find the most serious defect of the volume in the treatment which is given to the great age of customary law which covered the period from the fall of the Carolingian Empire to the age of the "reception" of the Roman law. This is not an unnatural result where the writers of the history are continental scholars, for the final influence of the Roman law was to reduce greatly the significance of medieval customary law in the law of today, and yet everywhere, even in Italy, the age of the customary law was a great and instructive age in the history of law, and its permanent influence not slight. It is however not so much the permanent influence of the customary which is inadequately treated, as that law in itself, how it found its starting point, the processes of its growth, its characteristic features, and its make up. Such a general description we should naturally expect to find in the introductory volume of this series especially in the account of the *pays de coutumes* in France where in the fullest way the opportunity might be offered us to draw instructive parallels with the history of our own law. The reasons are doubtless to be found in the fact that no general *coutume*, no national common law, grew up in northern France, and in the difference between the final results there and in England. We should very likely be asking too much of an historian of French law that he should keep in mind the needs of a student of Anglo-Saxon law, but there is here certainly something still left to be done for our particular benefit by some future historian. Fortunately it ought not to be difficult for the reader who knows something in advance of the history of English law to supply at least a part of what is lacking, a knowledge of just what customary law was, how it takes shape, and how it grew finally into a formal system.

I cannot forbear the somewhat personal remark that it is good to have that for which one has been long contending authoritatively supported. In the sections of German history based on Brunner, the feudal and manorial systems of law are kept carefully apart and the feudal courts proper and the manorial clearly distinguished. The distinction between these courts is sometimes well enough implied in English books, though practically often disregarded; the difference between the two systems of law is less clearly held, and the tendency is strong to regard both courts and law as more commonly mingled and confused in their practical operation than really was the case. A lack of clearness in these distinctions is to be found even in so recent a book as Holdsworth's *History of English Law* (cf. I 64-72), and in Bigelow's *History of Procedure* the feudal court proper is constantly called manorial. Nothing corresponding to the German system of *Dienstrecht*, which is here translated "servitary law", ever existed in England, but the fourth system described by Brunner, the town law, of course was found there.

George Burton Adams.

A HISTORY OF FRENCH PRIVATE LAW. By JEAN BRISSAUD. (Vol. III, Continental Legal History Series). Translated by Rapelje Howell, Boston: LITTLE, BROWN & Co., 1912. pp. xlviii, 922.

This work forms one of the "Continental Legal History Series", published under the auspices of the Association of American Law Schools. The prime object of the series is to meet the ever growing interest in Comparative Law, and to encourage a more profound knowledge of the origins of continental law in order better to understand the growth and development of English Law. In such a series we can readily comprehend how important a place M. Brissaud's work must necessarily occupy. If we seek for the sources of Modern French Law, we shall find them in Gallo-Roman traditions, or "coutumes", in Germanic customs which afterwards became the "coutumes" of the North of France, in Roman Law (perhaps the most important of all) in Feudal usages and Canonical Law.

Jean Brissaud was admirably fitted for the great task he undertook, namely, a history of the sources of French Law, public and private. M. Brissaud was the Professor of Civil Law at the Universities of Berne, Montpellier and later became Professor of the history of law at Toulouse. He was a profound student of Roman antiquity, and was admirably equipped for the task of preparing an original work on the ancient institutions of France.

The present work, as stated in the "translator's remarks", is a translation of the introductory chapter to Brissaud Part II on "Public Law" and of Part III on "Private Law." It is a very complete and scholarly treatise on the sources of French Private Law, but it is not, as the English title might indicate, a complete and thorough history of French Law. We do not believe that M. Brissaud intended it as such, and our criticism is directed against the *title* of the translation rather than against the original work itself. No history of French Law is complete which does not give the most detailed consideration to the influences of the revolution, to the debates in the constituent assembly, the work of codification and finally the great code Napoleon itself. M. Hanotaux has said: